

| |
|---|
| COMPLIANCE BOARD OPINION NO. 96-11 |
|---|

November 5, 1996

Mr. Laird Anderson

The Open Meetings Compliance Board has considered your complaint of September 10, 1996, in which you alleged that certain practices of the Crisfield City Council violated the Open Meetings Act. For the reasons set forth below, the Compliance Board has concluded that no violation occurred.

I

Complaint

Your complaint addresses a series of events related to the status of the City Manager. You allege that on August 7, 1996, a closed meeting was held by the City Council on this matter, “followed by an open meeting afterwards. No notice to my knowledge was given to the public so no one from the public attended.”

One week later, on August 14, a regularly scheduled meeting of the City Council was canceled. You were told by an individual at City Hall “that the meeting wasn’t canceled but postponed and that there were not any scheduled meetings. They would decide within a few days when they would have August’s meeting.”

Your complaint goes on to assert that the next day, August 15, the City Council again held a closed meeting concerning the status of the City Manager, “followed by an open meeting afterwards. Again no one from the public was made aware and no one from the public attended.” You point out that one member of the Council, Councilmember Todd, was notified of the session only an hour in advance and, because of the short notice, was unable to attend. You contend that the meeting should have been held the following day so that Councilmember Todd would have been able to attend.

Your last concern is a more general one, having to do with the manner by which the City Council gives notice of its meetings: “The way they announce closed meetings is by posting a notice on the inside of the front door [of City Hall] at the last minute.... [T]hey should have a closed glass box on the

outside of the building in public view and give a reasonable amount of notice before they have an open or closed meeting. I would also question if the media was made aware,” presumably of the August 7 and 14 meetings.

II

Response

In a timely response on behalf of the City of Crisfield, Mayor Donald W. Gerald indicates that the meeting of August 7 was closed for the purpose of discussing personnel matters. Mayor Gerald states that the day before the meeting, “notice of the said meeting was posted on the bulletin board at City Hall, and was transmitted, by FAX, to the two local newspapers, the *Crisfield Times* and *Somerset Herald*.” Mayor Gerald provided the Compliance Board with a copy of the notice, which is noted as having been “posted 8/6/96.”

With regard to the regularly scheduled meeting of the Mayor and City Council that was to have been held on August 14, Mayor Gerald reports that the meeting “was canceled by action of the Mayor, concurred in by members of the Council. The local press was notified of the cancellation.”

The meeting of August 15, Mayor Gerald states, was likewise closed for a discussion of personnel matters. Notice was posted and delivered to the press on the morning of the meeting. The copy of the notice provided to the Board states that it was “posted 8/15/96.” Mayor Gerald explains the timing of the meeting this way: “The meeting was called on such short notice at the request of two of the three members of the Council and the Mayor, and resulted from their perception that it was important to promptly address a major personnel issue which had become highly sensitive.”

Finally, about the method of posting meeting notices, Mayor Gerald explains the City’s traditional practice of posting notices on an interior bulletin board at City Hall, a few feet from the front door. Mayor Gerald also states that, in light of the complaint’s concern about the absence of meeting notices outside the building, “the City concurs that such a more prominent placement might be useful, and has placed a notice outside the building on ... one ... occasion in the interim and proposes to continue this practice.”

III

Analysis

A. Legal Background

This complaint is about notice, not about the closing of meetings. That is, we do not understand your complaint to be challenging the basis on which the Mayor and City Council closed the sessions on August 7 and 15, 1996. The asserted basis for closing was the exception for specific personnel matters found in §10-508(a)(1) of the State Government Article, and we have no reason to conclude that the exception was improperly applied.

In §10-506, the Open Meetings Act requires notice prior to any open or closed session. The Act also deals with three elements of notice: the timing, the content, and the method.

The Act's requirement about timing is the most ambiguous. The requirement is for "reasonable advance notice" of a session. There is no specified minimum amount of time between a public body's providing of notice and its holding of a meeting. The amount of advance notice that is "reasonable" for an emergency meeting may be substantially shorter than for a regularly scheduled meeting. The Attorney General has given this advice: "The rule of thumb, given the policies of the Act, is that notice of a future meeting should be given as soon as practicable after the body has fixed the date, time and place of its next meeting. If events require the prompt convening of a previously unscheduled meeting, the public body would be well-advised to provide immediate oral notice to reporters who are reasonably thought to be interested, and a written notice should be posted in the customary public place as quickly as possible." *Open Meetings Act Manual* 13 (2d ed. 1995).

As to content, a notice need only provide "the date, time, and place of the session." §10-506(p)(2). If all or part of a meeting is expected to be conducted in closed session, notice is to include a statement to that effect. §10-506(b)(3).

As to method, the Act gives broad discretion to public bodies to use "any ... reasonable method" of notice. §10-506(c)(4). The Act gives two examples applicable to local governments: "by delivery to representatives of the news media who regularly report on sessions of the public body or the activities of the government of which the public body is a part"; or, "if the public body previously has given public notice that this method will be used, by posting or

depositing the notice at a convenient public location at or near the place of the session.” §10-506(c)(2) and (3).

B. Adequacy of Notice

With regard to the meetings on August 7 and 15, the Mayor and City Council of Crisfield unquestionably satisfied the Act’s requirements about the content of a notice and the method of giving notice. The notices contained the date, time, and place of the meeting, as well as a statement that the meeting would be closed. In addition, the notices were sent to two local newspapers and were posted on the City Hall bulletin board.

The only issue, therefore, is whether the notices were given reasonably in advance of the meetings. For the meeting on August 7, notice was provided the day before. For the meeting on August 15, notice was provided earlier the same day.

From the discussion in both the complaint and the City’s response, the Compliance Board understands that these meetings were not part of the Mayor and City Council’s regular scheduled meetings. Rather, they were called to deal with a controversial personnel matter. The Open Meetings Act is not intended as a barrier to a public body’s holding of meetings on short notice, if that timing is needed to deal with urgent public issues. The Act prohibits a public body from intentionally delaying the giving of notice about a meeting that the public body knows it will hold; last-minute notice under these circumstances would not be “reasonable advance notice.” If, however, a public body needs to schedule a meeting on short notice, it need not delay the meeting in order to provide a longer period of notice for the public. In the absence of evidence suggesting that the Mayor and City Council had planned the meetings of August 7 and 15 and then deliberately withheld notice, the Compliance Board is unable to find a violation arising from the timing of the notices.

Turning to the circumstances of the canceled meeting on August 14, the Open Meetings Act does not explicitly address cancellations. Thus, the Open Meetings Act leaves intact whatever procedures a public body uses to authorize the cancellation of a meeting. Nor does the Open Meetings Act address the prerogatives of one member of a public body concerning the scheduling of meetings. Therefore, the Compliance Board cannot address the concern you expressed about Councilmember Todd’s inability to attend the August 15 meeting. Implicit in the Act’s requirement of notice of “the date, time, and place of the session,” however, is the requirement that the public be notified of changes in those facts, including the fact that a previously

scheduled meeting had been canceled. The Mayor and Council of Crisfield complied with that requirement by notifying the local press of the cancellation of the August 14 meeting.

C. Place of Posting

The last matter raised in your complaint is the City's decision to use an interior bulletin board as the place for posting of meeting notices. The Compliance Board would be concerned were this the only method of notice. If City Hall is open only during ordinary business hours, posting in the interior of the building means that members of the public who work during the hours when City Hall is open would not have a reasonable opportunity to learn of meetings. The City, however, has responded to your concern by agreeing to post notices outside the building. Moreover, even if the interior posting were itself insufficient to satisfy the notice requirement of the law, notice to the news media is separately sufficient under §10-506(c)(2). Therefore, the Compliance Board finds no violation with regard to the City's method of notice.

OPEN MEETINGS COMPLIANCE BOARD

Walter Sondheim, Jr.
Courtney McKeldin
Tyler G. Webb